



**STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL**

ERIC T. SCHNEIDERMAN
Attorney General

STATE COUNSEL DIVISION
Litigation Bureau

Writer Direct: (518) 473-7614

December 19, 2011

Honorable Gary L. Sharpe
James T. Foley U.S Courthouse
445 Broadway, Room 441
Albany, NY 12207-2926

Re: *United States v. State of New York, et al.*
Northern District of New York
10-CV-1214 (GLS)

Dear Judge Sharpe:

During the recent oral argument, Your Honor indicated that the Court is prepared, if necessary, to enforce UOCAVA by issuing an order which sets a new primary date for 2012. As the Court is aware, the branches of New York State government take multiple positions regarding an appropriate UOCAVA-compliant date for the 2012 primary election. The State Senate, which was granted amicus status, argues for an August primary. The State Assembly, on the other hand, submits that the primary should be held in June, and is concerned that an August primary would significantly disrupt elections operations, including the conduct of the November general election, and suppress voter turnout. Finally, the Governor does not take a position as to the appropriate primary date.

Annexed to this letter are (1) a letter signed by the Speaker of the New York State Assembly; 2) a proposed order submitted on behalf of the New York State Assembly, which sets the 2012 non-presidential federal primary for the fourth Tuesday in June, and 3) a letter from the ECA, an organization comprised of the county officials charged with administering elections in New York State. These documents supplement those annexed to the submission filed by the State on December 6th (Dkt. 45). Among the key reasons cited by the Assembly and the ECA for adopting a June primary date are that, in their view: an August primary would result in reduced turnout because many voters vacation during that month; identifying and training sufficient poll workers would be very difficult during a prime vacation period; schools, which are often used as poll sites, are frequently closed and unstaffed during the summer; and that, given the myriad tasks that must be completed to prepare and transmit ballots, as well as the inevitable delays caused by administrative challenges, machine malfunctions and counting of paper ballots, setting a June date would ensure better compliance with UOCAVA's 45-day ballot transmission requirement.

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As previously noted, the State of New York does not take a position as to an appropriate primary date. The Court should, however, have before it the fullest possible record if it determines to set a new primary date for 2012. The State therefore asks that the Court consider the attached submissions and the previous submissions made on behalf of the ECA, the State Assembly, the State Senate Minority leader, as well as various civic and civil rights groups – each of which sets forth grounds for holding the 2012 primary election in June.

Thank you for your consideration of this matter.

Respectfully yours,

S/ Jeffrey M. Dvorin
Jeffrey M. Dvorin
Assistant Attorney General
Bar Roll No. 101559

cc: All attorneys of record via CM/ECF